

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jeffrey Mulinelli (S)	Team: Squad #1	CCRB Case #: 201609887	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 11/19/2016 12:30 AM	Location of Incident: [REDACTED]	Precinct: 75	18 Mo. SOL 5/19/2018	EO SOL 5/19/2018	
Date/Time CV Reported Wed, 11/30/2016 1:17 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 11/30/2016 1:17 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Matthew Demaio	23579	952663	075 PCT
2. Officers			075 PCT
3. POM Ramil Casimir	11100	950170	075 PCT
4. POM Chris Whitehead	25402	923056	075 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SSA Robert Martinez	01369	922716	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Matthew Demaio	Abuse: At § 87(2)(b) in Brooklyn, Police Officer Matthew Demaio frisked § 87(2)(b)	[REDACTED]
B.POM Matthew Demaio	Abuse: At § 87(2)(b) in Brooklyn, Police Officer Matthew Demaio searched § 87(2)(b)	[REDACTED]
C.POM Ramil Casimir	Abuse: At § 87(2)(b) in Brooklyn, Police Officer Ramil Casimir searched the vehicle in which § 87(2)(b) was an occupant.	[REDACTED]
D.POM Matthew Demaio	Abuse: At § 87(2)(b) in Brooklyn, Police Officer Matthew Demaio searched the vehicle in which § 87(2)(b) was an occupant.	[REDACTED]
E.POM Matthew Demaio	Force: At the 75th Precinct stationhouse, Police Officer Matthew Demaio used physical force against § 87(2)(b)	[REDACTED]
F.POM Matthew Demaio	Force: At the 75th Precinct stationhouse, Police Officer Matthew Demaio used physical force against § 87(2)(b)	[REDACTED]

Officer(s)	Allegation	Investigator Recommendation
G.POM Matthew Demaio	Force: At the 75th Precinct stationhouse, Police Officer Matthew Demaio used physical force against § 87(2)(b)	
H. Officers	Force: At the 75th Precinct stationhouse, officers used physical force against § 87(2)(b)	
I.POM Chris Whitehead	Abuse: At the 75th Precinct stationhouse, Police Officer Chris Whitehead did not obtain medical treatment for § 87(2)(b)	

Case Summary

On November 19, 2016, § 87(2)(b) stopped at a friend's residence and left his white Chevrolet Venture van double-parked on Stanley Avenue in Brooklyn. § 87(2)(b) left his wife, § 87(2)(b) in the passenger's seat. § 87(2)(b) remained away from the vehicle for about 20 minutes.

§ 87(2)(b) returned to his vehicle at about 12:30 a.m. and drove away. PO Matthew Demaio and PO Ramil Casimir, of the 75th Precinct Anti-Crime Team, initiated a stop of § 87(2)(b)'s vehicle in the vicinity of § 87(2)(b) in Brooklyn. § 87(2)(b) did not immediately stop; rather, he continued driving for about 300 feet before pulling into a NYCHA parking lot.

When the officers approached § 87(2)(b)'s vehicle, they observed that at least one knife was in plain view. PO Casimir alerted PO Demaio of the knife, and both § 87(2)(b) and § 87(2)(b) were ordered to exit the vehicle. PO Demaio then frisked and searched § 87(2)(b) (**Allegations A and B**).

At some point following the search of § 87(2)(b)'s person, both PO Demaio and PO Casimir searched § 87(2)(b)'s vehicle (**Allegations C and D**). During the search, the officers discovered a machete. At some point, an officer discovered heroin under § 87(2)(b)'s vehicle and alleged that it belonged to § 87(2)(b). The officers eventually parked § 87(2)(b)'s vehicle and allowed § 87(2)(b) who was not licensed to drive, to leave the scene.

PO Demaio and PO Casimir transported § 87(2)(b) to the 75th Precinct stationhouse. PO Demaio escorted § 87(2)(b) to a cell and removed only the right handcuff from § 87(2)(b). PO Demaio then reportedly accused § 87(2)(b) of "eyeballing" him and then punched § 87(2)(b) in his face (**Allegation E**). PO Demaio allegedly accused § 87(2)(b) of attempting to strike him and then took § 87(2)(b) down to the floor (**Allegation F**). Approximately four more officers entered the cell area, and those officers allegedly kicked, punched, kneed, and elbowed § 87(2)(b) on his back, ribs, and neck before officers "mushed" § 87(2)(b)'s face into the ground (**Allegation G**).

At the conclusion of the physical struggle, § 87(2)(b) was handcuffed and shackled. § 87(2)(b) lay on his stomach as the shackles were applied. PO Demaio and officers applied the shackles and allegedly pushed and pulled § 87(2)(b)'s legs toward the back of his head, placing him in a scorpion-like position and possibly causing him to suffer a hernia (**also Allegation G, Allegation H**). Following this struggle, § 87(2)(b) requested that PO Whitehead obtain medical attention for him. PO Whitehead allegedly refused to obtain medical treatment for § 87(2)(b) (**Allegation I**). There is no video of this incident.

For his arrest, § 87(2)(b) was charged with criminal possession of a controlled substance in the third, fourth, fifth, and seventh degrees, criminal possession of a weapon, assault with intent to cause physical injury, two counts of violating a local law, harassment, and a VTL violation.

Mediation, Civil and Criminal Histories

- This case was unsuitable for mediation due to § 87(2)(b)'s arrest.

- As of February 17, 2017, no Notice of Claim has been filed in regard to this incident [01 Board Review].

- § 87(2)(b) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Civilian and Officer CCRB Histories

- This is the first CCRB case featuring § 87(2)(b) [REDACTED] [03 Board Review].
- This is the third CCRB complaint filed against PO Demaio in his four year tenure. He has previously been the subject of search and vehicle search allegations in case 201606783. The search allegation was closed as exonerated, while the vehicle search allegation was substantiated. The Board recommended formalized training, but no NYPD disposition was available at the time of this report.
- This is the fifth CCRB complaint filed against PO Casimir in his five year career. He was the subject of a vehicle search allegation, which was closed as unsubstantiated, in 2016. No allegations have been substantiated against him.
- This is the second CCRB complaint filed against PO Whitehead in his 18 year career. He has not previously been the subject of an alleged refusal to obtain medical treatment, and no allegations have been substantiated against him.

Findings and Recommendations

Allegations not pleaded

Abuse of Authority – Vehicle Stop.

§ 87(2)(b) [REDACTED] initially stated that officers had no reason to stop him. However, he also acknowledged being double parked on Stanley Avenue just prior to the officers' initiation of the stop. Further, § 87(2)(b) [REDACTED] was charged with a VTL violation, and both the parking violation and a failure to signal are mentioned in the narrative of the arrest report. As such, § 87(2)(b) [REDACTED]'s contesting the officers' reasons for the stop amounts to an arrest dispute. The allegation was therefore not pleaded [04 Board Review].

Abuse of Authority – Search (of person).

§ 87(2)(b) [REDACTED] waffled as to whether § 87(2)(b) [REDACTED] was searched at the scene of his arrest. He first stated that PO Demaio wanted to search § 87(2)(b) [REDACTED] but declined to do so following § 87(2)(b) [REDACTED]'s protest. He then stated that he believed § 87(2)(b) [REDACTED] was searched based on a conversation he had with her later, though he denied observing any officer search her.

In a phone statement, § 87(2)(b) [REDACTED] stated that she had a folding knife in her jacket pocket at the time of the incident. She did not know if this weapon was visible. Upon being asked to step out of the van, § 87(2)(b) [REDACTED] offered an officer the opportunity to "check" her for weapons. Although she acknowledged that this search occurred, she stated that she provided consent. She did not wish to participate in the investigative process and made no complaint about the officer's actions. Based

on the above, and due to the fact that the CCRB received no sworn eyewitness testimony concerning the reported search, the allegation was not pleaded [05 Board Review].

Allegation A – Abuse of Authority: At § 87(2)(b) in Brooklyn, Police Officer Matthew Demaio frisked § 87(2)(b)

Allegation B – Abuse of Authority: At § 87(2)(b) in Brooklyn, Police Officer Matthew Demaio searched § 87(2)(b)

§ 87(2)(b) testified that he did not immediately pull over upon noticing that an RMP had its lights activated behind him. Rather, he continued driving approximately 300 feet before pulling into a NYCHA lot near Ashford Street. § 87(2)(b) did this in order to stop in a well-lit area. § 87(2)(b) stated that he rolled his window down when PO Demaio approached his driver's door. PO Casimir approached the passenger's side of the vehicle. PO Demaio asked § 87(2)(b) why he pulled over in the parking lot and whether he noticed him trying to initiate a vehicle stop. § 87(2)(b) replied that he did not notice the officers' vehicle, but also that he pulled over in the NYCHA lot to be in a well-lit area.

According to § 87(2)(b) PO Demaio grabbed the driver's door handle and attempted to open it, but the door was locked. At about that same time, PO Casimir opened the passenger's door, which was unlocked. When PO Casimir opened the passenger's door, a knife, which § 87(2)(b) used for car stereo installation, fell out of the vehicle. § 87(2)(b) first became aware of the knife's presence when PO Casimir said, "We got a knife over here." He stated that he believed the knife to have been somewhere on the floor prior to this point. § 87(2)(b) described this knife as a beat up pocket knife of about 3.5" in length.

§ 87(2)(b) stated that he did not clearly remember the details of the events which transpired after the discovery of the knife. PO Casimir flicked his wrist while holding the knife to see if it would open. § 87(2)(b) further described that the knife's blade was loose and did not lock in the open or closed position. Both § 87(2)(b) and § 87(2)(b) were ordered out of the vehicle, and PO Demaio frisked § 87(2)(b)'s front and rear pants pockets. He then reached into § 87(2)(b)'s pants pockets and removed money, change, and a wallet. § 87(2)(b) did not have any other items in his pockets. At some point, officers discovered an additional weapon, specifically a machete, behind one of the seats in the vehicle. § 87(2)(b) did not know from behind which seat the machete was discovered. In offering an explanation for the presence of the machete, § 87(2)(b) informed the investigator that the van belonged to a relative, and that his relative used the machete for gardening [04 Board Review].

In a phone statement, § 87(2)(b) revealed that she entered § 87(2)(b)'s van prior to the incident, and that she discovered a 3" silver pocket knife on the seat. She stated that the knife was opened by prying it with one's fingers rather than a flick of the wrist. § 87(2)(b) placed the knife, which belonged to § 87(2)(b) into her jacket pocket.

According to § 87(2)(b) an officer matching PO Demaio's description asked her to step out of the vehicle and specified that he had observed a knife in her pocket. At some point, § 87(2)(b) informed the officers that the knife belonged to him, and he also volunteered that there was a machete under the front passenger's seat. § 87(2)(b) made no mention of § 87(2)(b) being frisked or searched [05 Board Review].

PO Demaio's testimony concerning § 87(2)(b)'s failure to stop his vehicle in a timely fashion was consistent with § 87(2)(b)'s. He stated that he activated his RMP's lights and sirens, and that § 87(2)(b) continued driving for approximately 30 seconds. He added that he observed § 87(2)(b) moving in an unusual fashion by raising his shoulders above the seat, leaning forward, and then leaning back to a normal seated position. § 87(2)(b)'s movements were not consistent with someone reaching toward the glove box to retrieve documents. § 87(2)(b)'s movement caused PO Demaio to fear for his safety because a common place for an individual to hide a weapon would be tucked behind them or underneath the seat. Given § 87(2)(b)'s movements, he suspected that § 87(2)(b) was either hiding or attempting to retrieve a weapon in anticipation of PO Demaio's arrival at his vehicle. In addition to the abovementioned concerns, § 87(2)(b) ultimately pulled into and stopped inside a private NYCHA parking lot designated for NYCHA employees only.

PO Demaio stated that he approached § 87(2)(b)'s vehicle from behind, and that as he walked toward it, § 87(2)(b) took his hands off of the steering wheel and moved them down toward his waist. PO Demaio yelled for § 87(2)(b) to put his hands back by the window. § 87(2)(b) complied.

Immediately after arriving at § 87(2)(b)'s vehicle, PO Demaio observed a large machete, which he estimated to be about two feet in length, on the floor of the vehicle near § 87(2)(b)'s right foot and accelerator pedal. The machete, which was closer to § 87(2)(b) than to § 87(2)(b), had a black handle, and its blade was partially sheathed. At that same time, PO Demaio observed another, smaller knife in the open center console tray in the front of the van. The knife was a silver and black folding knife.

PO Demaio reported that he waited 10 to 15 seconds before asking § 87(2)(b) to step out of the vehicle because he did not wish to startle either of the vehicle's occupants. During that time, which he also used to allow PO Casimir to make observations from the passenger's side, PO Demaio asked § 87(2)(b) if he had a driver's license. He did not ask for the driver's license but simply questioned whether § 87(2)(b) possessed one. He planned to ask § 87(2)(b) to retrieve the license once outside of the vehicle. PO Demaio then asked § 87(2)(b) to step out of the vehicle because he had already observed § 87(2)(b) moving around in a concerning manner during the initiation of the stop, and he had then observed two weapons inside the vehicle.

When § 87(2)(b) stepped out of the vehicle, PO Demaio frisked him for weapons in the area of his waistband, where he believed that § 87(2)(b) had been reaching when he observed him moving inside the vehicle. The frisk produced negative results, and PO Demaio did not frisk any other areas of § 87(2)(b)'s person at this time. PO Demaio then brought § 87(2)(b) to the front of § 87(2)(b)'s van in order to check his ID. At around this time, PO Casimir retrieved and tested the smaller knife and found that although it was a pocket knife, it had been modified to swing open like a gravity knife. As such, PO Demaio considered § 87(2)(b) to be under arrest. As he was checking the ID, PO Demaio observed § 87(2)(b) reach into his back pocket or the rear of his pants and then drop a small black pouch to the ground. § 87(2)(b) then kicked the pouch behind him and under the van. PO Casimir retrieved the pouch, and the officers found that it contained glassines of heroin.

PO Demaio acknowledged searching § 87(2)(b) though he stated that the search occurred after the above-described determination of the knife and following § 87(2)(b)'s attempt to discard narcotics. During the search, PO Demaio reached into § 87(2)(b)'s pockets, and he recovered an unspecified amount of cocaine [06 Board Review].

Like PO Demaio, PO Casimir stated that § 87(2)(b) failed to stop his vehicle in a timely fashion, continuing slowly for about half a block, and that he pulled into a private NYCHA lot. However, he made no mention of observing any furtive movements inside the vehicle.

PO Casimir stated that he arrived at the passenger's side of the vehicle and immediately observed a gravity knife in plain view in the center of the floor of the van. The knife was between the two front seats, and it had a silver blade, which was closed at the time of the observation. He did not remember the length of the knife or the color of its handle, but he was able to discern that it was a gravity knife based on the screws on it and a lever somewhere on the knife. PO Casimir conveyed his observation to PO Demaio, though he did not remember whether he did this verbally or via some type of gesture. PO Casimir considered § 87(2)(b) to be under arrest following his observation of the knife.

The officers ordered the occupants out of the vehicle. As § 87(2)(b) exited, PO Casimir repositioned himself outside the vehicle and observed an 18" machete in the area of the center console of the vehicle. Once § 87(2)(b) was outside of the vehicle, PO Demaio frisked him in the area of his waistband. § 87(2)(b) was not searched at this time. PO Casimir did not remember any additional details concerning the frisk. PO Demaio later tested the knife by flicking his wrist, and the knife opened as a result of this action. He therefore determined that it was, in fact, a gravity knife.

PO Casimir corroborated PO Demaio's testimony that § 87(2)(b) discarded a black pouch containing heroin, though he stated that he, rather than PO Demaio, was in front of § 87(2)(b) at the time. PO Casimir or PO Demaio handcuffed § 87(2)(b) and placed him into their RMP. While he did not remember if he or PO Demaio searched § 87(2)(b) he stated that it was procedurally appropriate to search him prior to placing him into an RMP, and he was certain that said search was conducted. PO Casimir did not remember § 87(2)(b) being searched at any other point [07 Board Review].

The UF61 and arrest report, both of which were prepared by PO Demaio, were thin on details but generally consistent with the officers' testimonies concerning the discovery of two knives in the vehicle, as well as the controlled substances found later. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

According to People v. De Bour 40 N.Y.2d 210, in order to frisk an individual, an officer must have reasonable suspicion that the individual is armed [09 Board Review]. People v. Reid 24 N.Y.3d 615 states that an officer may search an individual incident to lawful arrest but argues that said search must result from an arrest which has already occurred or is about to occur [10 Board

Review]. Patrol Guide procedure 208-03 requires that an officer field search a prisoner deemed to be under arrest [11 Board Review].

A photo search for the interior of a 2000 Chevrolet Venture van revealed that the center console area is incorporated into the dashboard and does not continue between the front seats. The floor between the front seats is open. The center console contains a small open tray area which is not concealed in any way [12 Board Review].

It is undisputed that § 87(2)(b) did not immediately stop his vehicle, and that he possessed two knives inside his van at the time of the stop. § 87(2)(b), § 87(2)(g)

[REDACTED]

§ 87(2)(b), § 87(2)(g)

[REDACTED]

§ 87(2)(b), § 87(2)(g)

[REDACTED]

Allegation C – Abuse of Authority: At § 87(2)(b) in Brooklyn, Police Officer Ramil Casimir searched the vehicle in which § 87(2)(b) was an occupant.

Allegation D – Abuse of Authority: At § 87(2)(b) in Brooklyn, Police Officer Matthew Demaio searched the vehicle in which § 87(2)(b) was an occupant.

As noted above, § 87(2)(b) acknowledged having two knives inside of his vehicle. He reported that both PO Casimir and PO Demaio searched his vehicle and discovered a machete behind one of the seats. § 87(2)(b) did not know behind which seat the officers discovered the machete.

§ 87(2)(b) clarified that PO Demaio did most of the searching, and that he looked under the seats and in the area of the back seat. § 87(2)(b) observed the search as he and § 87(2)(b) stood at the front of his van [04-05 Board Review].

§ 87(2)(b) stated that § 87(2)(b) volunteered the location of the machete, which was under the front passenger's seat, when the officers asked if there were any other weapons in the vehicle. She made no mention of officers searching the vehicle [05 Board Review].

PO Casimir stated that he was standing at the front of the van with § 87(2)(b) when he observed § 87(2)(b) drop a black pouch, which was about the size of a pouch in which ear-bud style headphones are sold, to the ground and kick it behind him and under the van. PO Casimir recovered the pouch and found it to contain glassines of heroin. Based on this discovery, the officers believed that more drugs maybe inside § 87(2)(b)'s vehicle. However, PO Casimir did not remember whether he searched § 87(2)(b)'s vehicle.

According to PO Casimir, he was standing at the front of the vehicle with § 87(2)(b) when PO Demaio searched the vehicle and recovered the knives. PO Casimir did not remember how PO Demaio gained access to the vehicle or where in the vehicle he searched. Nothing aside from the aforementioned knives was recovered from the vehicle [07 Board Review].

As noted above, PO Demaio stated that he observed § 87(2)(b) moving in an unusual fashion by raising his shoulders above the seat, leaning forward, and then sitting back normally as the officers attempted to initiate the vehicle stop. He suspected that § 87(2)(b) could be attempting to hide or retrieve a weapon at this time. Later in the incident, the officers discovered two knives in plain view on the floor and in the open center console of the vehicle.

According to PO Demaio, he moved § 87(2)(b) to the front of the van, at which time § 87(2)(b) remained inside the van. PO Casimir then entered the vehicle through a door, though PO Demaio did not remember which, and retrieved the knives. PO Casimir only retrieved the knives and did not search anywhere else inside the vehicle. However, based on the fact that two weapons were discovered within the vehicle, PO Demaio suspected that more weapons could be present inside of it.

PO Demaio reported that he checked § 87(2)(b)'s ID on his department phone while standing with § 87(2)(b) at the front of the van. At about that same, § 87(2)(b) who was facing PO Demaio and had his back to the van, reached into the area of his back pocket. PO Demaio was not

initially concerned for his safety because he had already frisked § 87(2)(b) and detected no weapons. § 87(2)(b) then fumbled with something behind his back before discarding a black pouch, which PO Demaio described as having a drawstring and measuring about 5" by 5". § 87(2)(b) dropped the pouch to the ground and kicked it behind himself and under the van with his right foot. At this time, PO Casimir was standing next to § 87(2)(b) who was still inside the van.

PO Demaio stated that PO Casimir came to the front of the van and looked for the pouch at PO Demaio's direction. PO Casimir picked up the pouch, looked inside, and said something about there being glassines inside. PO Casimir showed the pouch to PO Demaio, who observed what appeared to be decks of heroin wrapped in rubber bands. He clarified that the heroin was in small glassine envelopes, which he knew to be common packaging for heroin based on his training and experience making 50 or more heroin-related arrests in his career. As noted above, PO Demaio then searched § 87(2)(b) and discovered cocaine in his left pants pocket.

PO Demaio acknowledged that he searched § 87(2)(b)'s vehicle after § 87(2)(b) was placed into the RMP and following § 87(2)(b)'s removal from the van. He did so because weapons had already been found in the vehicle, as well as due to the fact that the narcotics discarded by § 87(2)(b) and discovered on his person led PO Demaio to believe that additional contraband existed in the vehicle.

PO Demaio entered the van through the driver's side front door and searched under the driver's seat. He then went into the vehicle through the sliding rear driver's side door and looked under the rear seats there. The van was generally empty, so PO Demaio could see clearly under the seats. PO Demaio continued to the front passenger's side and searched under the passenger's seat, the glove box, the door panel, and the center console. The center console did not have a closed compartment. PO Demaio opened the rear door of the van (hatch) in order to search the trunk area. Unlike a sedan, the van had no separation between its passenger compartment and trunk area. As such, PO Demaio suspected that § 87(2)(b) or § 87(2)(b) could have thrown something from the front of the van to the rear without any obstruction. In the trunk area, PO Demaio discovered an open zippered bag, which had the vehicle's make and model written on it and contained tools for the van. He did not search the bag as he was able to visually inspect what was inside of it given the fact that it was open. PO Demaio did not recover any additional contraband during the search [06 Board Review].

Three glassine envelopes of alleged heroin, one Ziploc bag of alleged cocaine, a small black bag with heroin residue, a gravity knife, and a machete were vouchered in regard to § 87(2)(b)'s arrest [13 Board Review].

People v. Belton (55 N.Y.2d 49 (1982)) held that where police have reason to believe that an automobile may contain evidence related to the crime for which the occupant was arrested or that a weapon may be discovered, the officers may contemporaneously search the passenger compartment and any containers, locked or otherwise, discovered in the vehicle [14 Board Review].

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation E – Force: At the 75th Precinct stationhouse, Police Officer Matthew Demaio used physical force against § 87(2)(b)

Allegation F – Force: At the 75th Precinct stationhouse, Police Officer Matthew Demaio used physical force against § 87(2)(b)

§ 87(2)(b) testified that he was escorted to the cell area by PO Demaio, and that he was then taken to the very last cell in the row. PO Demaio removed § 87(2)(b)'s right handcuff. He did not issue any instructions to § 87(2)(b) at this time. § 87(2)(b) did not offer any resistance, nor did he place his hands on or advance toward PO Demaio. § 87(2)(b)'s left hand remained handcuffed. PO Demaio accused § 87(2)(b) of “eyeballing” him as if he wanted to do something to PO Demaio. § 87(2)(b) did not respond but turned to his left, exposing the right side of his face to PO Demaio. He was trying not to look at PO Demaio because of what PO Demaio was saying. PO Demaio then punched § 87(2)(b) in his face with his closed right fist. The punch may have landed on the right side of § 87(2)(b)'s face, though he was not certain. § 87(2)(b) revealed that he was not injured by this “sucker punch.”

According to § 87(2)(b) PO Demaio yelled loudly, “Oh, you put your hand on me?” PO Demaio then placed § 87(2)(b) in a “karate hold,” which § 87(2)(b) clarified to be a Mixed Martial Arts style throw initiated by grabbing his right arm, and took him to the ground. § 87(2)(b) fell head over heels and struck his back and head against the ground and wall.

§ 87(2)(b) denied threatening PO Demaio in a physical or verbal manner prior to this interaction. However, he acknowledged accusing PO Demaio of planting drugs on him and stealing his money (IAB spin-off 201700312) [04-05 Board Review].

§ 87(2)(b)'s medical documents from § 87(2)(b) revealed that he complained of pain to his neck, upper back, lower back, and right wrist stemming from an assault which occurred at about 12:00 a.m. that day. § 87(2)(b) stated that three police officers pushed him to the ground and “knocked [him] over.” He also reported a loss of consciousness for an

unknown duration, an allegation he did not make in his CCRB testimony [see Privileged Medical Documents].

Based on the Prisoner Holding Pen Roster, the investigation determined that § 87(2)(b) and § 87(2)(b) were in the cell area at the same time as § 87(2)(b) [15 Board Review]. All but § 87(2)(b) were reached by the investigation [see IAs]. However, only § 87(2)(b) recalled the incident. § 87(2)(b) described that he was unable to see what was going on during the initial interaction between an officer and an older white gentleman in the cell area. He heard a conversation between an officer and a civilian, and the civilian was speaking aggressively. While § 87(2)(b) did not see how the physical struggle began, he became aware of it when he observed an officer “slam” the civilian to the ground. He was unable to describe the “slam” in detail because he had a poor memory of the incident. § 87(2)(b) did not believe that a “slam” was necessary based on the conversation he overheard leading up to it. § 87(2)(b) did not see any officer punch § 87(2)(b) [16 Board Review].

PO Demaio testified that he and PO Casimir escorted § 87(2)(b) to the cell area, and that § 87(2)(b) protested his arrest but was not combative. PO Demaio took § 87(2)(b) to the last cell in the row while PO Casimir made an entry in the Prisoner Holding Pen Roster at the cell desk. As PO Demaio searched § 87(2)(b) and removed his handcuffs, § 87(2)(b) remained cooperative. Once this procedure was completed and it was time for § 87(2)(b) to enter his cell, § 87(2)(b) stopped about one step before entering the cell. PO Demaio had his hand on § 87(2)(b)'s back as he guided him toward the cell because § 87(2)(b) was not in handcuffs. PO Demaio instructed § 87(2)(b) to go into the cell, at which point § 87(2)(b) turned around and swung at PO Demaio's head with a closed fist. The punch missed and sailed over PO Demaio's left shoulder. PO Casimir was still at the desk with the cell attendant, PO Whitehead, at this time.

PO Demaio reported that he wrapped his arms around § 87(2)(b)'s body in a bear-hug fashion, swept § 87(2)(b)'s legs with his foot, and took § 87(2)(b) to the ground. PO Demaio also fell to the ground, and both men landed on their chests. Specifically, § 87(2)(b) landed on the right side of his chest. PO Demaio did not see § 87(2)(b) strike his head or face on the ground and observed no injuries to § 87(2)(b)'s face or head following the takedown. PO Demaio denied punching or striking § 87(2)(b) in any manner at any time during this incident, and he made no mention of § 87(2)(b) losing consciousness [06 Board Review].

PO Casimir testified that he was at the cell area desk, which was at the other end of an L-shaped hallway from where § 87(2)(b) and PO Demaio were when he heard a scuffle and heard PO Demaio say, “Stop.”

PO Casimir and PO Whitehead ran to PO Demaio. PO Casimir did not remember who arrived first. PO Demaio took § 87(2)(b) to the ground by gripping § 87(2)(b)'s wrist with one hand and pushing § 87(2)(b)'s shoulder with the other. PO Casimir stated that he was not entirely certain that this was the technique used by PO Demaio, and he added that he described a general takedown procedure and not necessarily what PO Demaio did. PO Casimir did not see PO Demaio use any other techniques to bring § 87(2)(b) to the ground, and he did not learn

whether any other technique was used. PO Casimir did not remember seeing § 87(2)(b) resist being taken down. He also did not remember if he assisted in bringing § 87(2)(b) to the ground, though he thought that § 87(2)(b) may have been on the ground already when he arrived.

According to PO Casimir, § 87(2)(b) landed on his stomach after being taken down. He did not strike his face on the ground [07 Board Review].

PO Whitehead acknowledged that he was the cell attendant and was at the cell desk at the time of the incident. He observed PO Demaio enter the cell area with an individual matching § 87(2)(b)'s description, though he did not remember anything unusual about § 87(2)(b)'s behavior. PO Whitehead did not remember if PO Casimir was present at this time.

According to PO Whitehead, PO Demaio continued to the row of cells with § 87(2)(b). PO Whitehead described the cell area as being U-shaped, with the cell desk at the bottom, horizontal leg of the U. His view of the cells was blocked by a wall.

About ten seconds after PO § 87(2)(b) departed for the cells with § 87(2)(b), PO Whitehead heard a ruckus coming from the end of the hallway. More specifically, PO Whitehead heard unspecified sounds which indicated to him that a physical struggle was underway. He did not remember hearing voices at this time.

Seconds later, PO Whitehead ran to the area from which the ruckus came, which he described as being near the last cell at the very end of the hallway. This location is 30 to 40 feet from the cell desk. When he arrived at the location of the struggle less than ten seconds later, he observed § 87(2)(b) chest down on the ground. PO Whitehead did not remember the particulars of § 87(2)(b)'s behavior, nor did he remember observing any injuries to his person at the time. PO Demaio and PO Casimir were in § 87(2)(b)'s immediate vicinity at this time. PO Whitehead denied becoming involved in the physical struggle, and he stated that he did not observe any officer punch § 87(2)(b). At some point, PO Demaio stated that § 87(2)(b) took a swing at him. PO Whitehead observed no evidence to suggest that any officer had struck § 87(2)(b) [17 Board Review].

Sgt. Robert Martinez, who was the Anti-Crime sergeant on the night of the incident, testified that he was not present when the struggle erupted in the cell area. Rather, he was upstairs on the second floor of the stationhouse, either in the sergeant's lounge or the Special Operations office. Sgt. Martinez stated that PO Demaio came to him and informed him that § 87(2)(b) attempted to punch him in the face as he placed § 87(2)(b) into a cell. PO Demaio was not struck. PO Demaio reported that in response to § 87(2)(b)'s action, he took § 87(2)(b) to the ground and handcuffed him. Sgt. Martinez did not remember PO Demaio specifying the use of any additional force. He did not remember if he checked on § 87(2)(b) after learning this information [18 Board Review].

§ 87(2)(b)'s arrest photo captured no injuries to any part of his face. The TRI for this incident, which was prepared by PO Demaio, was consistent with PO Demaio's testimony. It revealed that a forcible takedown was used by PO Demaio but did not cite any other force [19-20 Board Review].

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation G – Force: At the 75th Precinct stationhouse, PO Matthew Demaio used physical force against § 87(2)(b)

Allegation H – Force: At the 75th Precinct stationhouse, officers used physical force against § 87(2)(b)

As noted above, § 87(2)(b) reported that he was taken to the ground by PO Demaio. He reported that at PO Demaio's call at least four more officers entered the cell area. § 87(2)(b) did not see any of these officers long enough to describe them. He did not remember what any of them looked like or whether they were uniformed.

According to § 87(2)(b) an officer placed an unknown object over § 87(2)(b)'s head. § 87(2)(b) believed that the object felt like a jacket but was uncertain as to what it actually was. The officers then kicked, kneed, elbowed, and punched § 87(2)(b) on his back, ribs, and neck. § 87(2)(b) did not see which officer did these things. He judged the nature of the strikes by how they felt but was uncertain as to what they were. § 87(2)(b) later denied that he was struck by elbows and knees. Rather, the officers pressed against his body with their elbows and knees during the struggle. No officer struck § 87(2)(b)'s face, though at some point an officer "mushed" § 87(2)(b)'s face into the ground or sat on his face or head. § 87(2)(b) denied flailing or punching or kicking at the officers. He made attempts to protect his body but did not remember what exactly he did.

As the saga continued, § 87(2)(b) was handcuffed and shackled. At some point, officers turned § 87(2)(b) from his stomach to his back and then pushed his legs so hard that he believed that he may have suffered a hernia due to a lump that he felt in his groin. However, § 87(2)(b) did not follow-up with a doctor. In a follow-up call with the undersigned investigator, § 87(2)(b) alleged that he was lying face down on the floor when officers pushed and pulled his legs toward the back of his head, placing him in a scorpion-like position. He stated that this may have been the action which caused him to suffer the aforementioned hernia [04-05 Board Review].

As described above, § 87(2)(b)'s medical documents from § 87(2)(b) revealed that he complained of pain to his neck, upper back, lower back, and right wrist stemming from an assault which occurred at about 12:00 a.m. that day. § 87(2)(b) stated that three police officer pushed him to the ground and “knocked [him] over.” He also reported a loss of consciousness for an unknown duration. The medical documents contained no mention of any of the strikes or other force mentioned above. There is no record of a hernia or other injury to the groin area [see Privileged Medical Documents].

§ 87(2)(b) who was the only individual identified via the Prisoner Holding Pen Roster who recalled this incident, stated that he observed § 87(2)(b) be taken to the ground by an officer. § 87(2)(b) “moved around” while on the ground. As the struggle unfolded, an officer reportedly placed his knee on the back of § 87(2)(b)'s neck. § 87(2)(b) did not see any officer punch or elbow § 87(2)(b) nor did he mention a knee being used against § 87(2)(b) in any other manner. § 87(2)(b) did not see if § 87(2)(b) was handcuffed or shackled, nor did he see if § 87(2)(b)'s legs were pushed toward the back of his head [16 Board Review].

PO Demaio acknowledged taking § 87(2)(b) to the ground, though his version was different than that offered by § 87(2)(b). According to PO Demaio, he wrapped his arms around § 87(2)(b) in a bear-hug fashion and then used his foot to sweep § 87(2)(b)'s legs and bring him to the ground. PO Demaio testified that he remained in control of § 87(2)(b)'s arms after taking him to the ground. § 87(2)(b) stiffened his arms and kicked his feet. PO Demaio's arms were still wrapped around § 87(2)(b)'s arms. As such, PO Demaio prepositioned his arms and under-hooked both of § 87(2)(b)'s arms. He then pulled § 87(2)(b)'s arms behind his back. PO Demaio overcame § 87(2)(b)'s resistance by using no force other than pulling § 87(2)(b)'s arms in the previously described manner. It took 15 seconds or less to handcuff § 87(2)(b). No officer assisted PO Demaio in handcuffing him. PO Casimir and PO Whitehead did not arrive until after § 87(2)(b) was already in handcuffs. Other uniformed officers, whose identities PO Demaio did not remember, arrived because they heard fighting, but none of them became physically involved in the struggle.

A uniformed officer, whose identity PO Demaio did not recall, handed PO Demaio a set of leg shackles. PO Demaio placed the shackles on § 87(2)(b) as a safety precaution. PO Demaio secured the shackles himself while § 87(2)(b) lay on his stomach, partially on his right side. § 87(2)(b) did not resist at this time. PO Whitehead may have placed his hands on § 87(2)(b)'s feet in order to prevent him from kicking. No other officer became physically involved in the struggle.

PO Demaio denied punching, kicking, kneeling, or elbowing § 87(2)(b). PO Demaio did not push § 87(2)(b)'s legs toward his head and did not see any officer do so. He did not push § 87(2)(b)'s face into the ground or place his weight on § 87(2)(b)'s head. PO Demaio did not see any officer do these things. He used no force against § 87(2)(b) not described above, nor did he learn that any additional force was used. § 87(2)(b) did not complain of any injuries following the struggle [06 Board Review].

PO Casimir stated that he and PO Demaio secured the handcuffs on § 87(2)(b) by pulling his hands behind his back. This process took a matter of seconds. No officer punched, kicked, kneed, or elbowed § 87(2)(b) nor did any officer push § 87(2)(b)'s face into the ground or place his weight on § 87(2)(b)'s head. No officer pushed § 87(2)(b)'s legs behind his head or used any force against him aside from pulling his hands behind his back. PO Casimir did not observe any injuries to § 87(2)(b)'s person, nor did § 87(2)(b) complain of any. PO Casimir denied that any object was placed over § 87(2)(b)'s head during the struggle [07 Board Review].

PO Whitehead described that the struggle with § 87(2)(b) lasted 20 to 30 seconds. He denied becoming physically involved in the struggle as § 87(2)(b) was already in handcuffs or in the process of being handcuffed when he arrived. PO Whitehead denied using or observing any of the force alleged by § 87(2)(b). He did not remember observing any injuries to § 87(2)(b)'s person at the conclusion of the incident, nor did he recall § 87(2)(b) making any such complaints. Like PO Casimir, PO Whitehead denied that any object was placed over § 87(2)(b)'s head at any point [17 Board Review].

As noted above, Sgt. Martinez stated that he was not present during the struggle but was informed of it later by PO Demaio. He did not learn of any force used aside from a takedown [18 Board Review].

As previously discussed, the TRI mentioned no force aside from a takedown [20 Board Review].

§ 87(2)(b), § 87(2)(g)
[REDACTED]

§ 87(2)(b), § 87(2)(g)
[REDACTED]

Allegation I – Abuse of Authority: At the 75th Precinct stationhouse, Police Officer Chris Whitehead did not obtain medical treatment for § 87(2)(b)

§ 87(2)(b) testified that he asked an officer, who he believed to be the cell attendant, about eight times to use the bathroom and to be taken to a hospital. § 87(2)(b) did not state whether he informed the officer of his reason for wanting to visit a hospital. He described this officer as a uniformed white male, who stood 6'1" tall, weighed 200 pounds, had an average build, and was

in his 40s. He made these requests about five minutes after PO Demaio exited the cell area. The officer told § 87(2)(b) to shut up and said that he would miss his transportation to Central Booking if he went to the hospital. § 87(2)(b) believed that this was the cell attendant's voice because he did not see anyone else in the cell area. § 87(2)(b) told the officer that he did not "give a shit" about the length of his processing and wanted to visit a hospital. The officer left and did not return for a long time [04-05 Board Review].

§ 87(2)(b) corroborated § 87(2)(b)'s testimony as he independently recalled that he heard an older white male civilian request medical attention after the five minute struggle. He recalled that the civilian complained of back pain but did not remember hearing anything about a hernia. He did not state whether the officer responded to § 87(2)(b). § 87(2)(b) was transported to Central Booking shortly after the struggle and did not know if the civilian received medical attention [16 Board Review].

PO Whitehead acknowledged that he was the cell attendant on the night of the incident but did not remember if § 87(2)(b) requested medical attention at any point. He denied refusing to obtain medical treatment for § 87(2)(b) and stated that he always obtains medical care immediately upon a prisoner's request. According to PO Whitehead, such requests are common following physical struggles as prisoners like to "overblow it." PO Whitehead stated that he vaguely recalled § 87(2)(b) going to the hospital, though he did not specifically remember § 87(2)(b) requesting to be taken to a hospital. He did not remember why § 87(2)(b) may have visited a hospital [17 Board Review].

PO Demaio and PO Casimir denied hearing or learning that § 87(2)(b) requested medical attention. PO Demaio stated that he asked § 87(2)(b) if he was okay and if he needed medical attention follow the struggle. § 87(2)(b) ignored him and did not answer. PO Demaio did not transport § 87(2)(b) to Central Booking but later learned that an officer called from Central Booking to get a TRI number. PO Demaio did not learn if § 87(2)(b) ever visited a hospital [06-07 Board Review].

Sgt. Martinez did not remember if he visited § 87(2)(b) in the cell area after the struggle. He denied that § 87(2)(b) complained of injuries or requested medical attention at any point during his tour. Sgt. Martinez did not believe that § 87(2)(b) was transported to a hospital, nor did he learn that this had occurred during his shift. Had this occurred, Sgt. Martinez would have been made aware of it as he is the Anti-Crime Team supervisor [18 Board Review].

According to his MOS photo, PO Whitehead is a 6'2" tall, 210 pound, § 87(2)(b) white male. As such, he matches the description of the cell officer provided by § 87(2)(b). His memo book confirmed that he was on duty from 11:35 p.m. until 7:05 a.m. the following day [04-05, 21 Board Review].

The arraignment history reports for § 87(2)(b) and § 87(2)(b) revealed that they were in the 75th Precinct stationhouse at the same time. § 87(2)(b) arrived at the stationhouse at 12:51 a.m., while § 87(2)(b) arrived at 12:03 a.m. The men were transported to Brooklyn Central Booking within one minute of each other. Their reports note their respective transports as

occurring at 11:07 a.m. and 11:08 a.m. The arraignment history report also indicated that § 87(2)(b) was transported to § 87(2)(b) Hospital at 3:38 p.m. [22 Board Review].

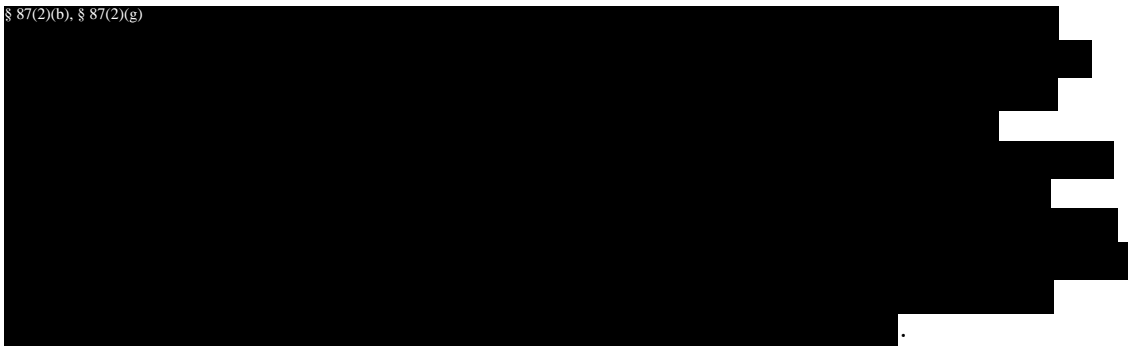
While offering a different time, 10:20 a.m., the Command Log solidifies the determination that § 87(2)(b) and § 87(2)(b) were transported to Central Booking at the same time. The Command Log documented a visit to § 87(2)(b) Hospital following § 87(2)(b)'s transport to Central Booking, but it did not specify a time. He was removed to Central Booking a second time at 5:10 p.m. according to the Command Log. § 87(2)(b)'s physical and mental conditions were noted as "Good/Good" in the Command Log, and there were no edits to this portion of the entry [23 Board Review].

The Medical Treatment of Prisoner Report, which was prepared by PO Michael Gessner of the 75th Precinct, revealed that § 87(2)(b) was taken to § 87(2)(b) Hospital at 12:57 p.m. The document was signed by Physician's Assistant § 87(2)(b). The only complaint listed was pain to the head and back [24 Board Review].

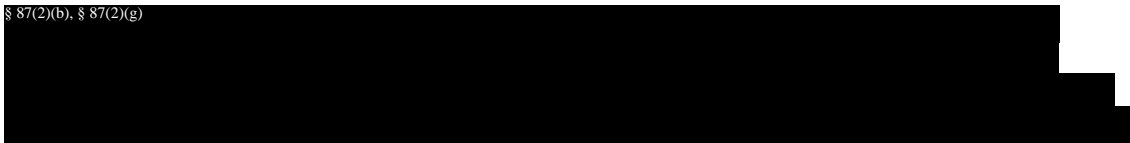
§ 87(2)(b)'s medical documents from § 87(2)(b) had times overlapping with the Medical Treatment of Prisoner Report and the arraignment history report. Further, the same physician's assistant is noted on the medical records, suggesting that § 87(2)(b) was treated at § 87(2)(b) rather than § 87(2)(b) Hospital. § 87(2)(b)'s medical records contained no mention of a refusal to obtain or a delay in obtaining medical treatment [see Privileged Medical Documents].

According to Patrol Guide Procedure 210-04, police officers are required to obtain medical treatment for prisoners in police custody when the prisoner requires it. As officers are not trained medical professionals and not all injuries are necessarily clear or visible, for the safety of those in police custody, officers should obtain treatment for those who request it. In order to address those instances when treatment is not required, the Patrol Guide also notes that officers must take precautions by sending additional personnel for those lacking physical signs of injury in case they are feigning symptoms in an attempt to escape [26 Board Review].

§ 87(2)(b), § 87(2)(g)



§ 87(2)(b), § 87(2)(g)



§ 87(2)(b), § 87(2)(g) [Redacted]
[Redacted].

§ 87(2)(b), § 87(2)(g) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted].

Squad: 1

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date